# EXHIBIT AAAAA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| In Re: | ) | **Case No. 19-34054-sgj-11** |
| | ) | Chapter 11 |
| HIGHLAND CAPITAL MANAGEMENT, L.P., | ) | Dallas, Texas |
| | ) | December 10, 2020 |
| | ) | 9:30 a.m. Docket |
| Debtor. | ) | |
| HIGHLAND CAPITAL MANAGEMENT, L.P., | ) | **Adversary Proceeding 20-3190-sgj** |
| Plaintiff, | ) | - MOTION FOR PRELIMINARY INJUNCTION |
| v. | ) | - MOTION FOR TEMPORARY RESTRAINING ORDER |
| JAMES D. DONDERO, | ) | |
| Defendant. | ) | |

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

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APPEARANCES, cont'd.:

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| For the Defendant: | D. Michael Lynn<br>John Y. Bonds, III<br>BONDS ELLIS EPPICH SCHAFER JONES, LLP<br>420 Throckmorton Street, Suite 1000<br>Fort Worth, TX 76102-5304<br>(817) 405-6903 |
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - DECEMBER 10, 2020 - 9:58 A.M.

THE COURT: We only have left today the Highland matter. There may be people on the line for the RE Palm Springs matter, but if you're on the line for that, the Court granted a motion for continuance that was filed by SR Construction, Inc. a few days ago. So if you were on the line for that, that's been continued at the Movant's request. Or the Objector's request, I should say. And it's to be reset at such point in time as the lawyers seek that.

All right. So, with that, I am going to turn to Highland and our emergency motion for a temporary restraining order against James Dondero that was filed by the Debtor. First, for the Debtor team, who do we have appearing?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz, also with John Morris. John Morris will be handling the hearing today on behalf of the Debtor.

THE COURT: All right. Thank you. For Mr. Dondero, who do we have appearing?

MR. BONDS: Your Honor, John Bonds and Michael Lynn.

THE COURT: All right. Thank you. The Committee, I know, is interested in this. Who do we have appearing for the Committee?

MR. CLEMENTE: Good morning, Your Honor. Matthew Clemente; Sidley Austin; on behalf of the Committee.

THE COURT: All right. I'm going to ask, do we have anyone appearing for certain parties who filed another emergency

motion yesterday, I think involving what seemed like very overlapping issues. The parties that I'm talking about are Highland Fixed Income Fund; NexPoint Advisors, LP; NexPoint Capital, Inc.; and NexPoint Strategic Opportunities Fund. Do we have anyone -- I think it was the K&L Gates firm who filed an emergency motion yesterday on, like I said, what I think are some overlapping issues with what we're going to hear about today. Anyone here on the line for those entities?

MR. WRIGHT: Yes. Good morning, Your Honor. It's James Wright, K&L Gates. I wasn't expecting this matter to be on today, so I need to apologize for not having a coat and a tie.

THE COURT: Okay. Well, I realize I picked you out. But could you, for the court reporter, say your last name again? It was a little garbley.

MR. WRIGHT: Yes. It's James Wright, W-R-I-G-H-T.

THE COURT: Okay. Thank you. Well, we have a lot of other folks on the line, so I'll just ask: Is there anyone else out there who desires to appear? This was obviously set very expedited, so maybe people did not file a pleading to weigh in, but maybe they're wanting to appear. If so, go ahead. (No response.) All right. Hearing no others, I will go to you, I guess, Mr. --

MR. BAIN: Your Honor?

THE COURT: Oh, go ahead.

MR. BAIN: Your Honor?

THE COURT: Yes?

MR. BAIN: I'm sorry. I was on mute. This is Joseph Bain of the law firm of Jones Walker. I represent the CLOs. And Your Honor, at the appropriate time, if Your Honor doesn't mind, I have a few comments that may help inform the Court on kind of what's going on. But I'm happy to wait until the appropriate time.

THE COURT: Okay. Very good. Well, and the reason why I picked out Mr. Wright regarding that newest emergency motion is, you know, I know they've asked for an emergency setting next Tuesday, and I have not -- I've not made a decision on that. I kind of wanted to see what I hear about today and figure out if there's really, you know, a need for that or not.

So, thank you, Mr. Bain. We'll talk to you at some point today.

MR. BAIN: Thank you, Your Honor.

THE COURT: Any other appearances?

All right. Well, I was about to go back to or go to Mr. Morris. But let me ask Mr. Bonds or Mr. Lynn: Did you file a responsive pleading? When I left here yesterday afternoon, I did not see one. But was there one filed late at night, by chance, that I just haven't seen?

MR. BONDS: No, Your Honor, we have not.

THE COURT: Okay. Thank you.

MR. BONDS: (garbled)

THE COURT: All right. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor. John Morris;

Pachulski, Stang, Ziehl & Jones; for the Debtor.

Let me begin by thanking Your Honor for hearing us on such shortened notice. What I thought I'd do is spend a few minutes, Your Honor, talking about why we're here, summarizing the facts, and then summarizing for the Court the relief that we're seeking.

As Your Honor, I presume, is aware, we filed this motion on Monday, together with a declaration from Jim Seery, the Debtor's CEO and CRO, with 29 separate exhibits. And if it pleases the Court, I'd like to proceed in that manner.

THE COURT: All right. You may.

MR. MORRIS: Okay. Your Honor, we do regret that we're here, frankly. The Debtor has worked very hard during the course of this case to get to where we are. We have a plan on file that calls for the monetization of the Debtor's assets for distribution to holders of allowed claims, we have an approved disclosure statement, and confirmation is just five weeks away.

Unfortunately, in the last couple of weeks, Mr. Dondero has engaged in what we firmly believe is wrongful conduct and can't really be credibly disputed or justified. As Mr. Seery lays out in his declaration and as Mr. Dondero's own written words show, Mr. Dondero recently interfered with the Debtor's operations and decisions and made some rather explicit threats.

We're not here to punish Mr. Dondero. We're not here seeking sanctions for violation of the automatic stay. Rather, we're here to simply set some very clear and firm ground rules on a go-forward basis so the Debtor can get across the finish line without interference or coercion by Mr. Dondero or anyone acting on his behalf. That's all we're here to do today.

We tried to work with Mr. Dondero's counsel on a stipulation, but regrettably were unable to do so.

So let me describe for the Court the facts that support the motion, and at the end of that I will offer our exhibits into evidence.

I do want to provide some context into how we got here. The facts are pretty simple. As Your Honor will recall, back in January, with this Court's approval, Mr. Dondero surrendered control of the Debtor to an independent board of directors, including Mr. Seery. As Your Honor knows, though, Mr. Dondero was retained as a portfolio manager and as an unpaid employee of the Debtor.

Pursuant to the Court's order and the term sheet entered into with the Unsecured Creditors' Committee, Mr. Dondero's responsibilities were to be determined by the board, and he agreed to resign at the board's request.

Over the summer, as Your Honor will recall, Mr. Seery was appointed the Debtor's CEO and CRO. Throughout this time, Mr.

Seery worked closely with Mr. Dondero. And one of the things they worked on was trying to come up with a so-called pot plan, the goal of which was to come to a consensual resolution of this case. Mr. Seery's goal, the (garbled) goal, the Debtor's goal, was to try to give the estate an alternative to the monetization of the Debtor's assets, and Mr. Seery worked hard and in good faith in that regard.

As Your Honor will also recall, in late summer the Debtor and certain litigation creditors agreed to mediate these disputes. In September, the Debtor announced that it had reached an agreement with Josh Terry and Acis to resolve their claims. I don't need to remind the Court of the nature of the disputes between Mr. Dondero and Mr. Terry, but suffice it to say that Mr. Dondero made clear that he opposed not only the settlement that was reached at the mediation, but, really, any settlement at all with Mr. Terry.

At around the same time, while still trying to get to the pot plan and a consensual resolution, the Debtor did present its plan of reorganization that provides for the monetization of the assets for the benefit of creditors. By the end of September, Mr. Dondero made it clear that he would oppose both the Acis settlement and the Debtor's plan.

He has every right to do that, Your Honor. Well, those steps are contrary to the interests of the Debtor. In addition, it also became clear that Mr. Dondero, through

(garbled) trust, has continued to press his claims that the Debtor had -- that the Debtor had mismanaged Multi-Strat during the case.

For these reasons, I think on October 2nd the board asked Mr. Dondero to resign, and he did so on October 9th.

With confirmation on the horizon, in the last couple of weeks, regrettably, Mr. Dondero has, in fact, interfered with the Debtor's business. There's no dispute that the Debtor serves as the manager of certain CLOs. There's no dispute that Mr. Dondero and certain of his affiliates hold a portion of the preferred notes in the CLOs managed by the Debtors. I don't think there's any dispute that the Debtor's duty is to the CLOs and not to any particular holder of CLO interests.

In late November, in furtherance of his duties, Mr. Seery directed that certain assets held by the CLOs be sold. Mr. Dondero and certain entities he controls, the ones that we mentioned earlier, Your Honor, the ones that are the (garbled), apparently disagreed with Mr. Seery's business judgment, and that happens.

I do want to point out, I don't know if Your Honor has had a chance to read the competing TRO, --

THE COURT: I have.

MR. MORRIS: -- but what's notable -- okay. What's notable in there, Your Honor, is that they expressly admit, and I'm quoting, the Debtor is responsible for making

decisions to sell the CLOs' assets. They admit that in their request for a TRO.

So there's no dispute that Mr. Seery has the right to do what he set out to do. Nevertheless, Mr. Dondero intervened and personally stopped the trades that Mr. Seery authorized. It's in writing. It can't be disputed. In fact, it's set forth in Exhibit 8, which is attached to Mr. Seery's declaration, which can be found at Docket 4 to the adversary proceeding.

Not only did Mr. Dondero cause the trades to halt, he told certain people, including the Debtor's chief compliance officer, not to do it again, and (inaudible) that they would face personal liability if they did so.

The Debtor sent cease-and-desist letters to Mr. Dondero and his affiliated entities. Those letters are attached as Exhibits 9 and 10 to Mr. Seery's declaration. And the fact is, Your Honor, for this particular part of the episode, Mr. Seery's conduct is simply unacceptable and was one of the events that precipitated the filing of this motion.

THE COURT: You said Mr. Seery. I think you meant Mr. Dondero.

MR. MORRIS: I apologize, Your Honor. I certainly did, yes.

THE COURT: Okay.

MR. MORRIS: The other event that caused the Debtor

to file this motion was a rather explicit written threat that Mr. Dondero made to Mr. Seery promptly after the Debtor acted to fulfill its fiduciary duties to the estate.

As the Court may generally be aware, Mr. Dondero and certain of his affiliates are the makers under a series of promissory notes in favor of the Debtor. The notes are attached as Exhibits 11 through 23 to Mr. Seery's declaration. Certain of these notes are demand notes, meaning that they don't have a term, they don't expire at some defined point in the future, they're payable upon demand by the holder. The Debtor is the holder of these notes.

Last week, the Debtor exercised its right to make a demand for payment of all unpaid principal and accrued interest, estimated to be approximately $30 million in the aggregate. Those demands are set forth in Exhibits 24 through 27 in Mr. Seery's declaration.

The demand notes are property of the Debtor's estate, collection of the notes is part of the Debtor's liquidity plan, and the proceeds are expected to be used to pay creditors' claims.

Shortly after the demand for payment on the notes was made, Mr. Seery [sic] sent a short text that can be found at Exhibit 28, saying simply, Be careful what you do. Last warning.

To Mr. Seery's surprise, Mr. Dondero called him the

following morning, ostensibly to talk about his pot plan. As laid out in his declaration, Mr. Seery expressed considerable concern over the threat, expressed his view that he thought it was unlawful, and was surprised, really, at the nature of the conversation.

Mr. Dondero didn't apologize during that call. He didn't express regret. Instead, he suggested that the lawyers would handle that issue. And only at the end of the call, when Mr. Seery pressed, did Mr. Dondero begrudgingly say that he didn't mean any physical harm.

Your Honor, we're five weeks away from confirmation. The Debtor is laser-focused on getting there. We are -- continue -- we have resolved substantial claims. We continue to resolve substantial claims. And though if there was a viable pot plan the Debtor would still pursue it, the Debtor is seeking a smooth transition into its post-bankruptcy state. We continue to negotiate with creditors who have outstanding claims. And we need peace. We need the freedom to get there.

As a result of the foregoing, the Debtor seeks the entry of a temporary restraining order in the form of Exhibit A attached to the motion, which is on Docket #2 in the adversary proceeding. In substance, the form is intended to prevent Mr. Dondero from interfering with the Debtor's business, engaging in threatening or coercive conduct, and using his affiliates or others acting on his behalf to do the same.

In our discussions with Mr. Dondero's counsel, it became clear that Mr. Dondero was not interested at this time in resolving the entirety of the dispute. We wanted to get this whole adversary proceeding open and closed and put this behind us. But regrettably, we're here today to press the motion because we were unable to come to that agreement.

So, in addition to the entry of the order attached to the motion, the Debtor also requests that the Court hold an evidentiary hearing on the Debtor's request for a preliminary injunction on January 4th, when we already have time on the Court's calendar.

And so that there's no misunderstanding, if the parties cannot resolve this matter beforehand, the Debtors do intend to take discovery during the intervening period. We will be prepared on January 4th, and we would expect, if forced to, to call Mr. Dondero as a witness at that hearing.

I have nothing further, Your Honor. Oh, actually, I do have something further. The Debtor moves for the entry into evidence of the declaration of Mr. James P. Seery, Jr. (muffled).

THE COURT: Okay. You got a little garbley. I think someone unmuted their device during your --

THE CLERK: Mr. Bonds --

THE COURT: Okay. But the request was that the Court admit into evidence the declaration of Mr. Seery at Docket

Entry #4, along with the 29 exhibits that were attached to that declaration. Any objection? (No response.) All right. Those will be admitted into evidence.

(Debtor's 29 exhibits are received into evidence.)

THE COURT: All right. Mr. Bonds, what does Mr. Dondero wish to tell the Court? All right. I think you put yourself back on mute when I made the comment. Please unmute your device.

MR. BONDS: I'm sorry, Your Honor. Can you hear me?

THE COURT: I can.

MR. BONDS: Your Honor, I would first like to apologize for Mr. Dondero's email to Mr. Seery. It should not have been sent. It is unfortunate that Mr. Dondero had several good points to make, but the message he was trying to send to the Debtor seems to have been lost, and for that I apologize.

Mr. Dondero had serious concerns about the way in which the Debtor's employees have been treated in this case. As the Court knows, the employees who built this company will be terminated either on December 31st or upon confirmation of the Debtor's most recent plan. Mr. Dondero does not agree to such termination or the financial treatment of the employees, especially the treatment over the last few months, in which they have seen their claims be substantially reduced.

Your Honor, Mr. Dondero is further concerned with the

Debtor's lack of sale of assets, especially the lack of competitive bidding. Mr. Dondero may want to bid on some of those assets, and under the Debtor's procedure, he is being precluded from bidding, even if the sale is outside of the ordinary course of business.

Mr. Dondero is further frustrated by the Debtor's sale of certain CLOs under applicable law. Is this an attempt around the hearing on the 16th? I don't know, Your Honor, but we are set for the 16th on the issue of whether or not the sales are being made outside the ordinary course of business. Is the Debtor trying to sell its assets without competitive business -- bidding? Why is that?

And what the Debtor would like you to sign is as an overly broad TRO written, I suspect, with a peppering of anger throughout. The relief requested is basically in the declaration of Jim Seery. It contains a number of acts which the Debtor seeks to have this Court determine are prohibited conduct. That term is defined in the Debtor's motion for TRO. We assert that such language is overly broad and its (inaudible) behavior which Debtor seeks to prohibit is not justified, inapplicable, or simply does not make common sense.

Your Honor, in the second paragraph of the proposed TRO, there are five general concepts that are listed as prohibited conduct. The first category of prohibited conduct which we have issues with relates to Mr. Dondero communicating with the

Debtor's employees except as it relates to the shared services provided by or controlled by Mr. Dondero. Such a prohibition is unreasonably broad and seemingly may well violate the First and the Fourth Amendments.

Your Honor, we ask the question: Can Mr. Dondero communicate something as basic as an employment contract with an employee who is going to be let go without violating the TRO?

The second category of prohibited conduct relates to allegedly interfering or otherwise impeding, directly or indirectly, the Debtor's business concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the plan or any alternative to the plan. Your Honor, what does the word indirectly mean? Does such prohibition prohibit the Debtor from pursuing -- or Mr. Dondero from pursuing his Acis 9019 motion or appeal? What does the language mean with regard to pursuit of the plan or any plan alternative? Has the Debtor turned the shield into a sword? Can the Debtor -- can Mr. Dondero try to sell his pot plan which he and the mediators have worked so diligently on? Does Mr. Dondero violate the terms of the TRO simply by voting against the plan?

Is this really what the Debtor wants, or does the Debtor want to return the most money that it can to the Debtor's creditors?

Can Mr. Dondero even (inaudible) in the organization without violating the TRO?

Finally, the proposed order provides that Mr. Dondero is further temporarily causing -- temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) an entity owned or controlled by him and/or any person or any entity acting on his behalf from directly or indirectly engaging in any prohibited conduct. Again, what does the word causing mean? What about the word encouraging? Does that mean that the Debtor simply cannot do any action to protect himself -- Mr. Dondero cannot take any action to protect himself? Are we setting up Mr. Dondero to fail?

Your Honor, what we would ask, what we would ask the Court to do is either deny the TRO as being overly broad or order the Debtor to come up with some reasonable restrictions going forward. We are happy to consider anything reasonable, but the proposed TRO is anything but reasonable.

In summary, we ask the Court how the status quo would be altered by a TRO.

Your Honor, I think Mr. Morris has indicated that the Debtor intends to be able to confirm a plan on the 5th -- or the 12th, excuse me, of January. Your Honor, we don't believe that that's appropriate. Is Mr. Dondero prohibited from trying to get his plan confirmed? Is he -- I mean, it seems to me that he basically is.

Your Honor, with regard to two arguments made by Mr. Morris, or at least one, we deny that any demand notes precipitated Mr. Dondero's email. It had absolutely nothing to do with it. But we're not here to talk about Mr. Dondero's demand notes at this point.

I don't think I have anything further.

MR. MORRIS: If I may respond very briefly, Your Honor?

THE COURT: You may. Go ahead.

MR. MORRIS: Okay. Your Honor, we are cognizant, and we don't mean, with all due respect to Mr. Bonds, to infringe on any way Mr. Dondero's right to make applications to this Court, to file motions. I think I heard mention of, you know, questions as to whether Mr. Dondero could pursue his motion against Acis, his appeal of the Acis, about whether or not or he could file things in this Court. We expressly put in a footnote, in order to try to make it clear, that Mr. Dondero has and will continue to have a right to make any application he wants to this Court, to object to any motion that's made. That's not the point of the exercise. The point of the exercise is to protect the Debtor from interference -- to protect the Debtor (echoing) from interference, coercion, and from threats. It's really that simple. I don't know why words that we use in common language every day, such as causing or conspiring or encouraging, should be deemed to be

ambiguous. I think, given the importance of these issues, one ought to be able to stay on the right side of that line without questioning whether or not they're actually conspiring with somebody or encouraging somebody to do something that they're otherwise prohibited from doing.

What the Debtor will not tolerate, Your Honor, is play whack-the-mole, where we get an order against Mr. Dondero, only to have one of his affiliated entities or somebody acting on his behalf attempt to say, oh, no, I'm here acting on my own independent behalf, and they're going to do exactly what Mr. Dondero is prohibited from doing. So that's all.

Again, Your Honor, we're not here with hysteria. I don't think our papers were intended to nor did they project any hysteria. I think, with counsel, as provided for in the proposed order, we would be delighted to continue to work with Mr. Dondero constructively. If he's got ideas on his pot plan, we're not precluding him from doing that at all. All we're saying is that he's got to participate with counsel and that he's not going to make any further direct communications to the Debtor's officers, directors, or employees. That's all, Your Honor. We think it's really quite reasonable under the circumstances.

I have nothing further.

THE COURT: All right. Well, --

MR. BAIN: Your Honor?

THE COURT: Who just spoke up?

MR. BAIN: (garbled) Yes. Joseph Bain on behalf of the CLOs, if I may be heard.

THE COURT: Okay. Everybody else mute their line. Okay. Go ahead, Mr. Bain.

MR. BAIN: Yes, Your Honor. And can you hear me okay?

THE COURT: I can.

MR. BAIN: Wonderful. Your Honor, for the record, Joseph Bain of the law firm of Jones Walker on behalf of the CLOs.

Our role in this is obviously very sensitive, given the nature and relationships that exist. One of the things I did want to let Your Honor know, though, is that -- two things. One, one of the most outstanding issues, at least in my opinion, regarding confirmation of the plan is essentially what to do with the CLOs and collateral management agreements. That's still an open issue. If that's not resolved, there are significant rejection damages that could come from that. So that's the bad news.

The good news, however, is, up until this week, we've been negotiating with the Debtors and we have calls set for NexPoint -- with NexPoint to negotiate what all parties kind of refer to as a soft landing for the CLOs, which, to a large extent, involve the issues that are before you today.

I just, I just wanted to provide that context because the parties are talking and we are kind of taken aback by kind of the most recent event this week, because from an outsider's perspective, the current issues that are currently kind of at dispute here, we thought everyone was working towards a deal. And I think it is a little ironic that -- and as Your Honor knows, I was involved in the *Hoactzin* case, and I thought that that was a very -- I represented Mac Murray (phonetic) in that case, and I thought Ms. Byrnes and Mr. Hendricks did an excellent job of pulling all the parties together.

And Your Honor, I don't want to stray too far outside of my lane to suggest that that same approach is what is needed here, but I just want to raise for Your Honor to let you know that we are here. We're kind of the party stuck in the middle. And we're hoping and we're -- remain willing to negotiate all the outstanding issues. But obviously, given the nature of some of the allegations, it's more complicated right now.

THE COURT: Okay.

MR. BAIN: And that's all I have, Your Honor.

THE COURT: All right. Well, I appreciate you speaking up. And you may or may not remember that the Court ordered mediation last July, global mediation, including Mr. Dondero, mediation among the Debtor, Mr. Dondero, UBS, Acis, the Crusader Redeemer Committee, and we had a co-mediation

team. Retired Bankruptcy Judge Allan Gropper and former Weil Gotshal partner Sylvia Mayer. And while I don't communicate with mediators, I fully believe from the parties' reports that was mediation that the parties and lawyers tried very, very hard in to get to some settlements, and in fact, they did get to a settlement with Acis and the Redeemer Committee.

So, I have a heck of a lot of thoughts here, and I'll refrain from sharing every one of them, but I'm going to share a few of them. While I appreciate Mr. Bonds doing what was an honorable thing and apologizing on behalf of his client for the written communications that were worded in such a way where someone might think they were threatening or a violation of the stay, it wasn't an apology from Mr. Dondero directly. I think the really, really honorable thing might have been if Mr. Dondero came here, hat in hand, willing to go under oath and explain himself. You can share that with him, that's what this judge thinks, that the apology through counsel fell a little short, although I definitely appreciate counsel expressing the apology.

You know, I've been going back and forth looking at my computer screen today, and, you know, it's rather shocking to see in writing, you know, with the photo shot of a text where Dondero says, "Be careful what you do-last warning." I mean, that's just pretty shocking.

MR. BONDS: Your Honor? Your Honor?

THE COURT: Yes.

MR. BONDS: Can I have a second? Mr. Dondero did apologize to counsel and to Mr. Seery as well, and so the idea that Mr. Dondero has not apologized is not entirely correct.

THE COURT: Okay. Well, if I misunderstood, I apologize. But I guess what I was really trying to convey is, in a situation like this, I think coming into court and taking his lumps and saying things under oath might have been a better way to proceed.

I guess the second thing I want to say is I wish Mr. Dondero was here, because maybe I'm reading this wrong, but I think he needs to hear and know he is not in charge anymore of Highland. It may have been his baby. He may have created its wealth. But when he and the board made the decision to file Chapter 11, number one, that changed everything. And then number two, when the Committee was formed and was threatening "We think we need a Chapter 11 trustee because of conflicts of interest of Mr. Dondero and others," and when the Committee negotiated something short of that with the Debtor in January 2020, you know, a settlement that involved Mr. Dondero no longer being in charge, no longer being CEO, no longer having any role except portfolio manager with the Debtor, and when various protocols were negotiated, heavily negotiated, for weeks, detailed, complex protocols, life changed even further. It changed when he filed Chapter 11, when he put his baby,

Highland, in Chapter 11, and then it changed further in January 2020 when this global corporate governance settlement was reached. As we know, it involved independent new board members coming in and eventually a new CEO. He's not in charge.

Now, that doesn't mean he's not a party in interest, and he can certainly weigh in with pleadings in the bankruptcy court. But these communications that I've admitted into evidence, and the declaration, the sworn declaration of Mr. Seery, suggest to me that he's not fully appreciating that, sorry, you're not in charge. And when you chose to put the company in bankruptcy because of the overwhelming debt, it started a cascade of events, so that now I'm depending on a debtor-in-possession with a new board and a new CEO and a Committee of very sophisticated members and professionals who are working in tandem with the Debtor to be in charge, basically. All right? So that's another thing I just feel compelled to say for Mr. Dondero's benefit.

I guess another thing is there was a little bit of a theme, Mr. Bonds, in your comments that Mr. Dondero is just concerned, more than anything else, about the way employees are being treated, or at least that's a major concern. And I don't find that to be especially compelling. I mean, maybe if he was sworn under oath and testified, I would believe that, but it doesn't feel like what's really going on here. Again,

he took the step of deciding that the company should file Chapter 11. We had the change in corporate governance in January. And he has the ability -- everyone, I think, would very much be interested in a plan that he supports. You know, he wants to get the company back. That has been made clear in hearings from time to time, and I believe, from Seery's declaration and Highland's lawyers, that they've been and will remain receptive to Mr. Dondero's ideas for a different type of plan that might allow him to get back into control of Highland, if he puts in adequate consideration that makes the Committee and others happy.

But we're in a proverbial the-train-is-leaving-the-station posture right now. Okay? We've got confirmation coming up the second week of January or something like that. Okay. So the train is leaving the station, so we're running out of time to hear what Dondero might want to do as far as an alternative plan.

So, as far as the requested TRO, I appreciate that Mr. Dondero and his counsel are worried about some ambiguity, but I'm looking through the literal wording that has been proposed, and the wording proposed is that Dondero is temporarily enjoined and restrained for communicating, whether orally, in writing, or otherwise, directly or indirectly, with any board member, unless Mr. Dondero's counsel and counsel for the Debtor are included in such communications. Not ambiguous

at all to me, and not unreasonable. Okay? Time to have counsel involved in these conversations because, you know, we can't have businesspeople-to-businesspeople sending texts that look like threats to me.

Second, making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents. I don't think that's too much to ask. Please don't let him make threats to us anymore.

C, communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero. That seems reasonable to me because of the evidence in front of me.

Then D, interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the plan or any alternative to the plan.

Now, I guess maybe you're confused or feel like that is ambiguous. I will just say, for the sake of any doubt, and I think I heard Mr. Morris saying precisely this, that, you know, Dondero can file pleadings. Okay? He can file pleadings asking for relief. He can object to the plan. He can vote against the plan. And they are completely still open

to hearing about -- and I think they would have a fiduciary duty -- to hear about a pot plan that might be more favorable than what's on the table right now. But Mr. Morris, have I put words into your mouth? Isn't that exactly what you were saying?

MR. MORRIS: That is exactly right, Your Honor. And if you look, I think there's a footnote there that expressly provides -- gives Mr. Dondero the right --

THE COURT: Okay.

MR. MORRIS: -- confirms his right to do exactly what you just described.

(Echoing.)

THE COURT: Okay. Thank you for that. And I should say exclusivity is still in place, right? We don't -- I mean, I'm not inviting him to file a plan right now in violation of the exclusivity provisions, but I'm just saying discussions among lawyers, I think, are not only not prohibited but encouraged here.

And then, last, otherwise violating Section 362 of the Bankruptcy Code. Okay, the sky is blue. That is obviously not problematic.

Okay. So the next paragraph, James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with any entity owned or controlled by him and/or any person or entity acting on his behalf from directly

or indirectly engaging in any prohibited conduct.

You know, I don't -- I understand that indirectly, you know, there might be some concern about the ambiguity, but it looks like to me just sort of a catchall, okay, to the extent we didn't explicitly say it in the preceding paragraph, we don't want Dondero causing some employee of an affiliate he controls to do exactly what Dondero himself is prohibited from doing.

I don't think it's ambiguous. And if it is, if someone runs in here, he's violated Paragraph 3 of the TRO, well, obviously we would have a contested hearing where I'm not going to hold him in contempt of court unless I've got an evidentiary showing that would convince me of that.

So, I guess, on balance, I'm overruling the objections and I am granting the TRO.

And just to be clear, I'll make a record that bankruptcy courts certainly under Section 105 can issue a TRO, and courts are usually bound by the traditional factors of Rule 65 -- that is, looking at has there been a showing of immediate and irreparable harm? Is there a probability of success on the merits that the Debtor will be entitled to this when we have a later more fulsome hearing on the preliminary injunction request? Would the balance of equities favor the Movant Debtor here? And would the injunction serve the public interest?

I find from the evidence, the declaration of Mr. Seery, and the supporting documents, that all four prongs for a TRO are met here, so I am ordering it.

A couple of remaining things. We'll come back on January 4th to consider whether extension of this relief in a preliminary injunction is appropriate. I don't have at my fingertips the time of day where it's set on the 4th. Is it -- I think that's the Monday after the New Year's Day holiday. So I'm guessing we're set at 1:30.

Traci, if you're out there, can you confirm it's 1:30 on January 4th?

Okay. I'm not hearing a response from her. But Nate, maybe you can double-check that.

(Echoing.)

All right. Well, let's talk a minute about what is going to happen next week.

Mr. Bonds, I set -- okay, back on November -- please take your phone off mute when I am talking. Or put it on mute when I'm talking, please.

On November 19th, you filed the motion, basically -- I can't remember the wording of it -- but something like wanting to change the protocol for non-ordinary-course sales of assets. And you asked for an emergency hearing, and I denied that. And I was very concerned that it looked like an attempt to renegotiate the January protocol order that the Committee

had worked so hard to negotiate on. But it's set, finally. I think it's this next Thursday, a week from today.

But meanwhile, you know, again, I feel like the issues raised in that are very much overlapping with what we talked about today, as well as I feel like the January protocol order controls here, and it's an attempt to revisit that a month before confirmation.

But this newest emergency motion filed by Mr. Wright's client, it feels like, as I think I mentioned, the same type of motion dressed a little bit differently from entities controlled by Dondero rather than Dondero directly. And meanwhile, Mr. Wright has asked for a hearing next Tuesday. I'm not going to have three hearings on the same issue. So I guess I'll hear first from Mr. Dondero's counsel. I mean, what do you think I'm going to hear next Thursday that is going to change my mind about this was all covered in the January protocol order and I'm not going to revisit it a month before confirmation? Mr. Lynn, are you here to address that one?

MR. LYNN: Yes, Your Honor. First of all, I think the hearing is actually set for next Wednesday.

THE COURT: Okay.

MR. LYNN: Secondly, the motion filed by Mr. Wright, as I understand it, has to do with sales of assets by the CLOs that the Debtor manages as portfolio manager and not -- and

does not have to do with any sales of assets by the Debtor or its estate. So they're two different issues.

As I understand Mr. Wright's pleading, he is arguing that under the Advisers Investment Act, if I have that name right, that Mr. Seery, on behalf of the Debtor, ought not to ignore directions from or suggestions, requests, as they actually are, from investors in the CLOs with respect to the assets of the CLOs. That's entirely different from the concern that we are expressing with respect to sales of assets by the Debtor.

Secondly, while Mr. Dondero may have some influence on the CLOs, it is my understanding that the investors that Mr. Wright represents are governed by an independent board of directors, which Mr. Dondero may be on. I don't know whether he is or not.

Third, we are not trying to change the protocols. We do not believe anything in the protocols at all -- we've identified nothing in the protocols at all that says that the Debtor, and, by extension, Mr. Seery and the independent board, may take actions outside the ordinary course of business without notice and an opportunity for hearing before this Court.

We have asked in the alternative that if somehow the protocols authorize these actions, that the Court alter the protocols.

What triggered this, Your Honor, was a sale of an entity

known as SSP, which belonged to Trussway, which in turn belongs to the Debtor. We believe but we do not know for sure that the sale is below the price that could have been obtained. However, the sale was undertaken, as we understand, without competitive bidding, without notice -- certainly, there was no notice to Mr. Dondero -- and without an opportunity for anyone to be heard.

We do not think that the intention of the protocols was for this Court to abdicate its authority to oversee the Debtor's operations and to limit the authorities entitled to participate in decisions involving disposition of assets of major value, to limit the decision-makers to the independent board -- in particular, Mr. Seery -- and to limit it to the members of the Creditors' Committee, rather than providing notice generally to creditors, rather than providing a method for competitive bidding, rather than letting people know what is going on.

Your Honor has often stated, not just in this case, your concern that the process should be transparent. We believe that at this point the Debtor is attempting to use the protocols in an effort to avoid the transparency that creditors, equity interest owners, and most of all, this Court, are entitled to.

THE COURT: All right. Well, I don't know if anyone wants to respond to that, but --

MR. MORRIS: If I may, Your Honor.

THE COURT: Go ahead, Mr. Morris.

MR. MORRIS: Just very briefly. I think I heard Judge Lynn say that there's nothing in the protocols that authorizes the Debtor to sell assets outside the ordinary course of business. And if he made that admission, I still don't see the point of this motion next week. All they're doing is questioning the Debtor's business judgment. They don't really have a right to do that. Mr. Dondero doesn't have a right to participate in the sale of those assets. The Debtor -- you know, there's no evidence before the Court, there will be no evidence before the Court, as to how the Debtor decided, what factors they considered when deciding to sell these assets. This is just completely improper.

(Echoing.)

Mr. Dondero personally participated in the corporate governance resolution last January. There has been no complaint by him or anybody else about the protocols, about the Debtor having operated outside the protocols. The Debtor is transparent. Every single month, we file monthly operating reports. You can see what's happening with assets, right? We work with the Committee. The Committee's not here joining in this motion. The Committee hasn't complained about the process. It's just Mr. Dondero. He's simply trying to exercise -- this is just another attempt to further exercise

control. He can make his motion. It will be denied because the facts simply don't support it.

THE COURT: Mr. Clemente, is it wrong of me to assume that you and your clients are very vigilant in paying attention to trades, transfers, outside the ordinary course? I assume since, again, you have a committee of sophisticated parties who are owed hundreds of millions of dollars, and you so heavily negotiated the January protocol order, that you're following it meticulously and paying attention to what's happening. Do you care to comment?

MR. CLEMENTE: Thank you, Your Honor. I do. Matt Clemente, for the record, on behalf of the Committee.

You're exactly right, Your Honor, and Your Honor actually touched on several things that I would have said earlier.

First of all, the Committee is made up of very sophisticated members, which makes my job sometimes easy and sometimes challenging, because they are very hands-on and they do understand the business of Highland and we did heavily negotiate the protocols early in the case, Your Honor, and they were designed with exactly these types of transactions in mind, so that the Debtor had to come to the Committee and lay out its case for a particular transaction.

With respect to the transaction at issue, that's exactly what happened, Your Honor. We're not going to get into, obviously, Committee deliberations, but I can tell you that

the protocols have been followed.

As Your Honor knows, when we've had an issue under the protocols, I remember several months ago when we argued about certain distributions being made, the Committee certainly was not shy about bringing it to Your Honor's attention.

So we have been very vigilant and very diligent in holding the Debtor accountable under the protocols. And we believe that -- although, again, when we've had an issue, we've come to Your Honor. We believe that the protocols have worked as they were intended to and as they were designed, Your Honor.

So I can assure you that the Committee has been very vigilant and the Committee will continue to be very vigilant. These issues were all raised in the context of negotiating the protocols. That was before Your Honor. Mr. Dondero was involved with that. It was very difficult negotiations, Your Honor.

But this does seem like somebody now trying to renegotiate what it was that the parties agreed to and Your Honor approved early on in this case.

So, Your Honor, rest assured, the Committee has been very vigilant and will continue to be very vigilant.

THE COURT: All right. And I guess the last thing I'll say on that point is, while of course we always want transparency --

(Interruption.)

THE COURT: While we, of course, always want transparency and notice and opportunity to object, I mean, these are not your typical run-of-the-mill assets. They're not a parcel of real property or a building somewhere or inventory somewhere or intellectual property. I mean, these are -- you know, again, we have a unique business here. And I think that was very much recognized in the process of negotiating the protocols, that this is not the type of business where you do a 363 motion on 21 days' notice any time you feel like, oh, today's a great day to trade this or that in whatever fund.

Well, we will go forward on this motion, because Mr. Dondero is entitled to his day in court to make his argument, put on his evidence, and try to convince me that this is not just trying to renegotiate something Mr. Dondero agreed to 11 months ago on the eve of confirmation. But I want to make sure -- oh, we're getting --

(Echoing.)

(Clerk advises Court.)

THE COURT: Okay. You're on mute. You're on mute, Mr. Lynn.

MR. LYNN: Your Honor, may I explain briefly? This is very distressing. Mr. Morris says that it is the ordinary course of this Debtor's business to sell a subsidiary. This is not the ordinary course of the Debtor's business. There is

nothing in the protocols that says that the independent board and just the creditors on the Creditors' Committee may make decisions concerning major sales. We will present evidence to that effect when it occurs, and we believe strongly -- and I want to state, Your Honor, I didn't participate in negotiations of those protocols. I wasn't involved. And I've looked at them. There's nothing that says that this can occur without going to a hearing. And there is nothing in the protocols that defines ordinary course of business to involve this.

This motion was not filed because Mr. Dondero wanted to get in the way. It was filed because I thought it was the right thing to do because I thought that this was contrary to the way bankruptcy and Chapter 11 should work. And it was reasoned by me, with Mr. Dondero's consent. And I very, very much am upset to hear things people say that he's trying to get in the way with this. He is not. He's asking for something that is very, very, very reasonable. If they have nothing to hide, and I hope they don't and don't believe they do, but if the Debtor has nothing to hide, what is wrong with notice and a chance for hearing?

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. If I briefly may be heard.

THE COURT: Go ahead.

MR. POMERANTZ: I actually did negotiate the

protocols. And I think what Mr. Lynn is conflating is the Debtor selling Debtor assets and the Debtor acting in its management capacity to sell assets of entities it manages.

We will also present the case law that basically an entity that is not a debtor whose assets are being sold by the Debtor acting as a manager is not within the purview of this Court.

So Mr. Lynn can be frustrated, could be upset with what's happening, but we dealt with these issues last year. Because as Your Honor mentioned, this Debtor is not the typical debtor. And we had long negotiations with the Committee on what is ordinary course and what is not ordinary course. And as I mentioned to you the last time we were here, Your Honor, as I mentioned to you in January when we had this approved, we were not seeking to get authority to sell assets out of the ordinary course of business or do any transactions out of the ordinary course of business.

Mr. Lynn thinks that what's happening is out of the ordinary course of the business. This Court has said it's not. So we are prepared to go forward with the hearing. We've also spoken to the affiliated entities about putting their hearing on for the same date, because we also agree they -- both motions raise similar issues. And I think we're close to an agreement on having both of those motions heard at the same time on the 16th.

Thank you, Your Honor.

THE COURT: All right. So it's the 16th, Wednesday. Did we look that up, Nate?

THE CLERK: It's at 1:30.

THE COURT: It's at 1:30? All right. So we will go forward with the Dondero motion Wednesday, December 16th, at 1:30, and we will go ahead and set the what I consider closely overlapping motion filed by the NexPoint entities and Highland Fixed Income Fund by Mr. Wright, we'll go ahead and set that at the same time.

Let me say this as clearly as I can. If there's going to be a challenge to the Debtor's business judgment, Mr. Dondero, he needs to be present at the hearing on video and he needs to testify, okay? I understand what Mr. Lynn said, that this was his idea, he thought the January protocol order violated the Bankruptcy Code, blah, blah, blah, but I am going to order that Mr. Dondero be present December 16th at 1:30 and testify. Okay?

So I've kind of modified that. I said if the business judgment of the Debtor is being challenged, but no, I'm broadening that. I think Mr. Dondero just needs to provide testimony on Wednesday. Given everything I heard today with the TRO request, and given that, in substance, he's -- he is challenging the Debtor's business judgment and the mechanism where the Committee oversees it, he just needs to testify. All right? So please convey that to him.

Now, Mr. Wright, I'm first going to ask, I know you weren't -- you were just listening in today, but do you want to say anything? I see you put your jacket on now. Thank you.

MR. WRIGHT: I did. I did find a jacket. I'm sorry, Your Honor.

THE COURT: Okay. Go ahead.

MR. WRIGHT: (muffled) So I, you know, I can address why we're asking for limited relief. I can also address the underlying motion, which (inaudible) some of -- in the underlying motion --

THE COURT: Okay. Your sound is very difficult to hear. Could you repeat what you just said? I didn't get it.

MR. WRIGHT: Yes, Your Honor. I'm happy to address our motion for an emergency hearing. I'm also happy to address the underlying motion we're asking be heard on an emergency basis. I didn't know, do you want me to address both or just the motion for why we're asking for emergency relief?

THE COURT: Well, I've gone ahead and said I will set it next Wednesday. It sounds like the Debtor saw the efficiencies maybe in having this one heard at the same time as the Dondero motion.

I have a couple of things I want to say for the benefit of you and your client, but I was giving you the chance to say

something first.

Here's what I'm thinking, going into this, so you can be prepared to address this next Wednesday. Your motion feels to me exactly like what we litigated *ad nauseam* in the Acis case. Now, if any of the Acis lawyers are on the line or Mr. Terry is on the line, I wonder if they are chuckling. And what I mean is -- I heard a chuckle. I don't know if that was Ms. Patel. We had hearings --

MS. PATEL: It was, Your Honor.

THE COURT: Okay. We had hearings in the Acis case. Remember, Acis was a portfolio manager for CLOs. And the party that was in the bottom tranche of the CLOs, okay, the equivalent, I think, to your clients here, the NexPoint entities and Highland Fixed Income Fund, we sometimes called them the subordinated debtholders or the equity-holders, that party -- it was a party named HCLOF -- began during the *Acis* case trying to do a call, trying -- redemption notice. Acis, liquidate these CLOs. We are -- we're done. We're tired. You know, we're outside the reinvestment period. We want you to liquidate. And started to kind of force that issue. Highland was the sub-manager of Acis at that time. So, guess what, the Chapter 11 trustee filed an adversary proceeding asking for TROs, saying, you know, this is the portfolio manager's discretion. And not only that, what they're doing isn't a reflection of reasonable business judgment because,

you know, we don't think it's the right time actually to liquidate these CLOs, they're just trying to deprive the portfolio manager of his stream of revenue for managing this.

So we had multiple hearings about this. I issued a TRO saying stop it, bottom tranche of the CLOs. It seems transparent you're just trying to deprive Acis, the portfolio manager, of value. And you know, irony, irony, it's like the backwards situation here. They were saying, but we're so late in the life of these CLOs, it makes sense to liquidate them. Why would you want to keep these things going? We're not violating the stay. We're not jacking with the estate value and trying to deprive Acis of its revenue stream. Anybody knows it makes sense to liquidate these late-in-life CLOs. Very ironic to me, although maybe it's not the situation, apples to apples, but here, you see what I'm saying, it feels like same situation, only flip-flopped. The portfolio manager here, Highland, is going to be engaged in liquidating the CLOs, and your client, bottom tranche of equity, is saying no, don't do that. You know, there's still value there.

Now, I will say, in my Acis case, the equity tranche, they kind of -- their theory evolved over time. They were like, well, we actually just want CLOs managed by Highland, a Highland entity, and Acis isn't a Highland entity.

So, bottom line, I issued a TRO. Stop it, equity tranche. This is not your call, it's the portfolio manager, and I think

you're just jacking with the portfolio manager to screw up the reorganization. And guess what, we even had then a preliminary injunction and then a plan injunction. And of course, there were bells and whistles on what would evaporate the injunction. But that's now on appeal to the Fifth Circuit.

So, you know, at my confirmation hearing at least in Acis, if not previous hearings, we even had expert witnesses and we pored through the language of the portfolio management agreements. And I don't know if here we have the same situation, but it was complicated in Acis because we had the portfolio management agreements between the CLO manager and the CLO issuers, but then there was a separate management agreement between the equity tranche and, I don't know, I can't remember who the counterparty to that one was. But there, there were multiple agreements, and you had to parse through it, and we had experts testifying about, you know, discretion of the equity-holder versus not, or portfolio manager, da, da, da, da, da. And I ruled as I ruled. I granted the injunction, to the detriment of the equity tranche. And maybe the Fifth Circuit one day will tell me I was wrong. You know, I really think it's a hard, hard, hard issue.

But I'm just telling you, that's how I ruled on, I think, three occasions.

Maybe the portfolio management agreements are worded differently here. You know, maybe -- maybe it's a different issue. But I will say I read your motion yesterday with frustration. I'm like, haven't I ruled on this like three times in the Acis case? And then, you know, maybe I haven't. Again, maybe, maybe the portfolio management agreements in this case would convince me differently. But were you aware of how I ruled in Acis?

MR. WRIGHT: Your Honor, I'm aware of the Acis case, but no, I wasn't aware that this particular issue was addressed in such depth.

THE COURT: Okay.

MR. WRIGHT: (muffled) I will, of course, go take a look at all those hearings. I anticipate that I'm going to try to draw some distinctions between my situation and the situations there, but I certainly will be prepared to address that next week.

I think the thing that I would say just very broadly is that we are not -- I think our request is very limited in what we're asking for. All we are asking for is that there is a temporary pause on the Debtor exercising its right as portfolio manager to direct sales that we don't agree with for a ten-day period. And we would then use that period of time to explore, either consensually or through rights that we (inaudible). And then in the process of looking at this, Your

Honor, under the documents effecting a transfer of portfolio management, you know, these documents, they're based on the rights of the preference holders.

You know, my client's concern is really about the, you know, the investment time window of claim today versus the funds, the relevant -- again, Mr. Macur (phonetic) -- my clients include two advisors that are, you know, that are ultimately I think controlled by a vehicle that Mr. Dondero controls, but also I have a few clients that are funds that are required by SEC rules, as I understand it, to have a majority independent board. So I dispute that they're a Dondero-controlled entity, but I understand that that's testimony (inaudible). But I -- that's -- that's not right.

And so the funds, --

THE COURT: Who are the board members?

MR. WRIGHT: I can have that for you next week, Your Honor.

THE COURT: Okay.

MR. WRIGHT: I don't have it in front of me. But they're required by SEC rules to have a majority independent board. And so we -- the funds that are an advisor of my clients, they have a much longer-term investment horizon. So, you know, in my mind, I probably overly-simplistically analogize it to the difference between saving money for a house you intend to buy in a year and how you might invest

that versus saving money for retirement that you might do in 20 years. And I think any investment advisor will tell you you're going to -- you're going to do that differently, because with a long horizon you can accept (inaudible) and bucket changes and stuff like that. When they go out a long time, you know, it'll be okay. And on a short horizon, you know, you need to sort of make sure you're holding onto what you have and just approach it differently.

Highland, under its plan, is intending to liquidate at the end of 2022, which that's -- that's fine. That's what they're intending to do. But that's a very different investment time horizon than my clients, and so we -- you know, and they're -- they're proceeding to run, you know, their liquidations that way. I don't think that there's anything wrong with that. You know, that's their discretion. But we think that we'd be better served with a portfolio manager that is taking a long-term time horizon, which once was Highland but now not, given the bankruptcy case. And so, you know, we'd like to ask that -- and we're just -- we're really not -- we're not asking for a TRO. I think Mr. Morris (inaudible) a TRO. I understand that's their position. But I dispute it.

Highland is in bankruptcy, and so it's subject to the, you know, it's subject to the bankruptcy system and subject to the control of the Court. What we are asking would be for the Court to use its power under 363 and 1107 and 105 to tell

Highland rough -- for 30 -- within 30 days to figure out if they can replace you under the documents or if there can be a deal, as Mr. -- Mr. Bain mentions, there will be discussion of a (inaudible) to reach a consensual resolution in which the portfolio manager would change that would have to involve the CLOs and probably my clients and also the Debtor, probably, to see if we can get there. And, you know, if we can't, we can't. That's really the limited nature of what we're asking for now. It may be different than what you were describing in the Acis case. But again, I will go and read those cases and I will be prepared to address that more fully next week.

MR. POMERANTZ: I mean, Your Honor, this is Jeff Pomerantz, if I may briefly respond.

THE COURT: Go ahead.

MR. POMERANTZ: I think there's a fundamental problem with the argument that Mr. Wright just made. First of all, there are other investors and other people with interests in those CLOs. It's not Mr. Wright's clients only.

And also, the premise that the decisions that are being made in terms of liquidating those assets have to do with the Debtor's timeline on liquidation, just, you'll hear from Mr. Seery next week, is fundamentally incorrect. Mr. Seery is making decisions on behalf of Highland that he believes are within his fiduciary duty to the funds to maximize value.

So the whole premise of the argument that this is between

a long-term horizon and a short-term horizon is just incorrect. And there are other people that Mr. Seery has to worry about. He has a duty to the CLO, and just because one set of investors wanted to do certain things, they don't have that right. It's -- it's -- it wasn't lost on us that, in Mr. Wright's motion, he did not point to any language in any agreements that in any way give him that right.

So while we appreciate that these CLOs have to be addressed, and we have engaged in discussions with Mr. Wright's client and Mr. Bain's client to try to have a soft landing, they have not occurred yet. And in the interim, the Debtor has to do what it is obligated to do and act in a fiduciary manner and act consistent with the agreements. That's why we objected and we will be objecting to any moratorium on any of those efforts.

THE COURT: Okay. All right. So, Mr. Wright, I am also going to direct that you have a client witness to testify about these things. And I do want to understand, you know, who you're taking instructions from and who is on the board on these entities.

You know, we had a hearing before I think you were involved where the Committee was seeking discovery of documents, and a lot of the what I'm going to call Highland affiliates -- and I know people sometimes cringe when I use that word affiliates; you know, it may or may not meet the

Bankruptcy Code 101 definition of affiliate. But entities in the Highland umbrella, many of them resisted production of documents from the Committee. And I got concerned at that point in time of who is instructing the lawyers, because I felt like, in many instances -- not all, but in several instances -- you know, I was concerned it's in the estate's best interest to get these documents. You know, the Committee was the one seeking the documents, but we've got entities in the Highland umbrella resisting. And so it felt like there was a conflict. And if the same human beings were employees of the Debtor, and --

Anyway, I think we got through a lot of that, but I remember, in connection with all of that, looking at the list of Highland entities who filed proofs of claim in the bankruptcy case. And I remember asking, in some cases, like, who filed the proof of claim, and I was told that Mr. Dondero's counsel prepared a lot of these proofs of claim of the different entities. And at least signatories, I saw that Frank Waterhouse has signed the proofs of claim at least for NexPoint Advisors, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.

Anyway, we had a discussion about my concerns about conflicts back around that time, but here's what I'm getting at. I'm worried all over again about do we have any human beings involved calling the shots for your client, Mr. Wright,

that have fiduciary duties to the Debtor, and maybe this is getting in conflict with that. I just don't know. I just don't know. But it's concerning to the Court. So, what would help is if we have a human being testify for your clients so we can clear the air on that one. Okay?

So, next Wednesday, December 16th, at 1:30, we'll have a hearing on the Dondero motion and on these NexPoint motions of your client, Mr. Wright. And we're going to have a witness for Mr. Wright's client and we're going to have a witness -- and we're going to have Dondero being a witness. And Mr. Morris is going to upload your TRO, and we're going to have a follow-up hearing on January 4th on the preliminary injunction request.

All right. So, anything else?

MR. MORRIS: Yes, Your Honor. It's John Morris for the Debtor. I've got Mr. Seery on the phone, the Debtor's CEO --

THE COURT: Okay.

MR. MORRIS: -- and CRO. And if it pleases the Court, he would just like to spend a moment giving the Court an update as to where he is in the process.

THE COURT: Thank you. He may.

MR. MORRIS: Is that okay?

THE COURT: Uh-huh.

MR. MORRIS: Okay.

MR. SEERY: Thank you, Your Honor. Can you hear me?

THE COURT: Yes.

MR. SEERY: I appreciate the Court's time. I think with the overlapping motions it would be useful just to tick through very quickly, not to take too much of your time, where we are and why some of these things have come before you in the last couple days.

First, as you're aware, we have a plan out for a vote. We believe we're going to get confirmed. We believe we'll get the votes. We're still waiting on the votes. And we're still working on claims. So, as we speak, including even this morning, trying to resolve certain of the other open claims.

The Debtor is still managing its assets. And what that means is we're addressing financing with underlying assets that are in portfolio companies. We are addressing our own debtor-owned assets, some of which we are selling in the ordinary course. So, for example, securities. Where we have securities in an account, we have been selling those where we think the market opportunity was ripe.

Up until mid-March, Mr. Dondero controlled those accounts. He was the portfolio manager. We took them away after they lost considerable amounts of money, about ninety million bucks. Real money. So we took over control of those accounts since then, and we've been managing to sell them down to create cash where we think the market opportunity is correct.

With respect to subsidiaries, we don't have any plans to sell any PV assets now. These are companies that are part-owned, either directly or indirectly, through subsidiaries, with a number of other (inaudible) who are interest holders.

SSP, for example, there's been a lot of noise this morning, no real facts. I will tell you that we did sell SSP. We did it in conjunction, as Mr. Clemente indicated, with the Committee. We looked at number of bids. That entity was a private-equity-owned asset. We believe that it was sold appropriately. It wasn't selling an asset of the estate. It was actually a thrice-removed asset, also with other interest holders, including mostly completely independent, including SIBC -- SBIC owners who wanted to choose off that asset as well. We believe we got a very good price and executed that well. Happy to litigate and defend that at any time.

The CLOs, we're the manager of the CLOs. What we're trying to do in our plan is assign CLOs back to NexPoint Advisors. The reason for that is, while they do generate income, we didn't believe that the income was enough to justify us maintaining them. They would not be assets that we would continue to hold through the case. Or through the liquidation. Unclear whether NexPoint wants those assets now back or not. We have been working, as Mr. Bain indicated, closely with the Issuers and the Issuers' counsel, because there's very particular, specific ways to deal with those

assets under the documents that protect the various investors. As Mr. Morris pointed out, entities related, controlled by, managed by Mr. Dondero are not the only investors in these CLOs. Our duty is to the CLOs. We believe that we are adhering to that duty. We are happy to at some day litigate that.

With respect to asset sales, the Debtor has a team that manages these assets. The team came to me to sell certain assets. Mr. Dondero, NexPoint Advisors, they don't monitor these assets. They don't know anything about them. The assets we're talking about are loans, though the Debtor hasn't sold any of those, or securities that trade, equity securities that trade in the liquid markets. These are securities, you can go on the screen, you can go on Yahoo Finance and see how they trade.

Our team came to us and suggested that we sell some. I sat down with the analyst and the analyst suggested we sell. The manager of the day-to-day operations of CLOs suggested we sell. We set the sell notice within the context of the market. This wasn't a dumping. We thought that the market would support what we were doing, and it did.

Another asset that we were going to sell is an asset we don't have an analyst on. Haven't had one for years, apparently. It's not very much money. Mr. Dondero's related entities don't hold very much of the interests in the CLOs

that have that. They have debt which is owned by third parties. It's a good trade, in our opinion. Our analysis was it made sense to sell it within the context of the market. The Equity has no decision as to whether we do that. We're the manager.

Mr. Wright's example and his offer is, frankly, silly. If those public funds want to indemnify the Debtor and CLOs for any potential losses, that would be great, we can do that, we can talk about that, how to arrange that.

As to the pot plan, nobody has worked harder on the pot plan -- and I include Mr. Dondero -- than I have. Nobody. I didn't do it because I was trying to help Mr. Dondero. I thought it would be in the best interest of the estate, which means the creditors, the employees, and the investors whose funds we manage, to try to get a consensual deal done. So far, we've been unable to do that. In my declaration, there's a footnote. Not only did I help work on the idea, I actually drafted the term sheet. (inaudible) to do it, I presented it to the Creditors' Committee. Not that I wanted to do it. I thought they should do it. I did it. No one has worked harder for that.

The employees, unbelievably frustrated to hear that. Mr. Dondero put this company into bankruptcy. Our management of this estate has required that we fight with a lot of folks about keeping the team together. Again, we did it, not so

much for the individual team members, but we thought that would be the best way to enhance value for the estate and it would encourage an alternative plan that could be value-maximizing.

The employees have deferred compensation. That was all set up by Mr. Dondero. The money that was taken out and used in this -- by this company for other things rather than paying employees cash on a regular basis was used by Mr. Dondero well before I ever came into this case. If there are repercussions to employees because we are liquidating this entity or monetizing these assets, and because we have to do it through this vehicle, Mr. Dondero can stay in the mirror and not abort. It's very insulting and frustrating to hear that from counsel, who doesn't understand a thing about what we've done to try to keep the business together.

The CLO part of the business, we'd like to assign. We would like to assign as many of the employees over to help manage the business and have those go to Mr. Dondero's entities. And that's fine with us. You know, that is a concrete benefit to him, because it's also beneficial to the estate. We're not in the anger business. We are independent. The only thing that makes us angry is that when somebody just makes up noise, not facts, just statements that have no basis in reality of what's happened in this case, when we're trying to hold it together and come to a conclusion.

Sorry if I sound frustrated, Your Honor, because I really am, and I thought you should see that going forward before we go into next week. If the NexPoint entities want the CLOs, let's just work on that transfer. We have Mr. Bain and his clients. They are very good. They are CLO specialists. His co-counsel at Schulte is renowned in this space. We will work through it and make sure it works for the Issuers, make sure it works for NexPoint, and of course make sure it works for the estate.

Thank you, Your Honor.

THE COURT: All right. Mr. Seery, I really appreciate these comments. They've been very helpful to my thinking. In fact, I want to make sure it's under oath in case I ever want to take judicial notice of anything you've said just now. Do you solemnly swear or affirm that the statements you made were true and correct today, so help you God?

MR. SEERY: I do, Your Honor.

THE COURT: All right.

MR. SEERY: And just to be clear, if I ever make a statement to the Court, I consider it under oath.

THE COURT: Okay. Thank you. I appreciate that.

All right. So, again, I feel like that was so very helpful. And, you know, this is a precise example of why I am directing, if Mr. Dondero is going to urge a position with the

Court next Wednesday, he needs to testify. And if NexPoint, through whoever their decision-maker is, is wanting to urge a position to the Court, they need a human being to testify. And I'll hear Seery and I'll hear Dondero and I'll hear whoever that person is, and that's what's going to matter, you know, most to me. Yeah, we have some legal issues, certainly, but I like to hear business people explain things, no offense to the lawyers. But it's always very helpful to hear the business people in addition to the lawyers. All right. So, Mr. Morris, you're going to upload that TRO for me.

MR. MORRIS: Yes, Your Honor.

THE COURT: Mr. Wright, you can upload your order setting your motion for hearing next Wednesday at 1:30. And I think we have our game plan for now. Anything else? All right. We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 11:33 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

**/s/ Kathy Rehling** **12/11/2020**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

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